

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: SB 1990

INTRODUCER: Senator Baker

SUBJECT: Powers of Community Development Districts

DATE: March 1, 2010

REVISED: 3/9/10

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	Fav/1 amendment
2.			JU	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input checked="" type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill clarifies the powers of community development districts as carried out by their board of supervisors. The bill broadens the eminent domain powers of community development districts to any powers authorized by law.

This bill substantially amends sections 190.011 and 190.012 of the Florida Statutes.

II. Present Situation:

Community Development Districts

Chapter 190, F.S., the Uniform Community Development District Act, allows for the establishment of independent special districts with governmental authority to manage and finance infrastructure for planned developments.¹ Initial financing is typically through the issuance of tax-free bonds, with the corresponding imposition of ad valorem taxes, special assessments, or service charges.² Consequently, the burden of paying for the infrastructure is

¹ Section 190.002(1)(a), F.S.

² As authorized in ss. 190.021 & 190.035, F.S.

imposed on those buying land, housing, and other structures in the district -- not on the other taxpayers of the county or municipality in which the district is located.

Chapter 190, F.S., contains a number of provisions directing how community development districts (CDDs) are to be organized and administered. Section 190.041, F.S., gives the board of supervisors of the CDD or any aggrieved person recourse to remedies in law and equity as necessary to ensure compliance with Chapter 190. These remedies include injunctive relief to restrain any person violating the provisions of the act or any bylaws, resolutions, regulations, rules, codes, or orders adopted under the act. CDDs have the power of eminent domain relating to water, sewer, district roads, and water management.

Eminent Domain

“Eminent domain” is generally defined as the power of the nation or a sovereign state to take or to authorize the taking of private property for a public use without the owner's consent, conditioned upon the payment of just compensation. Eminent domain refers to a legal proceeding in which a government asserts its authority to condemn property, while inverse condemnation is a shorthand description of the manner in which a landowner recovers just compensation for a taking of his or her property when condemnation proceedings have not been instituted. An inverse condemnation action is initiated by the property owner, rather than the condemnor.³ Eminent domain is subject to constitutional prohibitions found in both the federal and state constitutions.⁴ Section 6, Art. X of the Florida Constitution reads:

- (a) No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner.
- (b) Provision may be made by law for the taking of easements, by like proceedings, for the drainage of the land of one person over or through the land of another.
- (c) Private property taken by eminent domain pursuant to a petition to initiate condemnation proceedings filed on or after January 2, 2007, may not be conveyed to a natural person or private entity except as provided by general law passed by a three-fifths vote of the membership of each house of the Legislature.

Florida’s law governing eminent domain can be found in Chapter 73 and 74 of the Florida Statutes. Except as limited or prohibited by constitutional provisions,⁵ there can be no taking of private property for public use against the will of the owner without direct authority from the legislature.⁶

III. Effect of Proposed Changes:

Section 1 amends s. 190.011, F.S., to clarify that the board of supervisors may enforce its rules pursuant to s. 190.041, F.S. The bill changes the word condemnation to “eminent domain” to make the terminology consistent. Previously, the CDD had authority to use eminent domain to condemn property for purposes related only to water, sewer, district roads, and for easements for

³ 21 Fla. Jur 2d Eminent Domain § 1 and references therein.

⁴ U.S. Const. Amend. XIV; Art. I, § 9, Fla. Const.

⁵ U.S. Const. Amend. XIV; Art. I, § 9, Fla. Const.

⁶ *Marvin v. Housing Authority of Jacksonville*, 183 So. 145 (Fla. 1938); *City of Ocala v. Nye*, 608 So.2d 15 (Fla. 1992).

water drainage. The amendment expands the allowable purposes to also include water management systems and any other purpose or activity authorized by law.

Section 2 amends s. 190.012, F.S., to broaden the CDD board's authority to include not only the powers enumerated in s. 190.012, F.S., but any other matters and activities authorized by Chapter 190. The bill clarifies that CDDs may not exercise any "law enforcement" power, rather than "police" power. "Police power" can mean power of the state dealing with public health, safety, or welfare and may be misconstrued.

Section 3 provides an effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

Barcode 945634 by Community Affairs Committee on March 9, 2010:

Clarifies that CDDs can only exercise the power of eminent domain within the confines of their powers under Chapter 190.